

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

In re MASSEY ENERGY CO. SECURITIES LITIGATION)	Civil Action No. 5:10-cv-00689
)	
)	<u>CLASS ACTION</u>
)	
This Document Relates To:)	The Honorable Irene C. Berger
)	
ALL ACTIONS.)	
)	

**MOTION OF THE UNITED STATES OF AMERICA
TO CONTINUE THE STAY OF DISCOVERY PREVIOUSLY
ENTERED BY THE COURT IN THIS CIVIL ACTION**

Pursuant to Rules 16 and 26(c) of the Federal Rules of Civil Procedure, as well as other applicable federal law and the inherent power of this Court, the United States moves this Court for an order continuing the stay of discovery in this Civil Action until the earlier of July 15, 2013, or the conclusion of the United States' criminal investigation of conduct relating to the subject matter of this Civil Action (the "Criminal Investigation"). The United States is authorized by counsel for all other parties to this Civil Action to represent that they do not oppose this motion.

Statement of Grounds for Motion

The United States has made significant progress in the Criminal Investigation since the parties filed their Joint Statement on July 3, 2012 [Doc. 147]. Notably, the United States has been able to secure the cooperation of certain witnesses critical to the Criminal Investigation. Information provided by these witnesses has led the United States to obtain a large volume of

additional documents and allowed it to identify other witnesses of significance to its investigation. The United States is in the process of obtaining further documents based on recent witness cooperation. The United States expects that these new sources of information will allow it to substantially advance its investigation in the coming months.

As explained in the United States' portion of the parties' Joint Statement of July 3, 2012, allowing civil discovery to proceed at this time would pose serious risks to the Criminal Investigation. The subject matter of this Civil Action and the Criminal Investigation overlap heavily. Some individual civil defendants may be or may become subjects of the Criminal Investigation. When civil discovery goes forward, the civil parties will gain information not otherwise available to them, allowing them to anticipate in detail the direction of the Criminal Investigation. This information likely would include documents only recently obtained or sought by the United States as a result of newly available information. An extension of the discovery stay thus is appropriate to protect the public's interest in the Criminal Investigation's unimpeded progress. The extension sought, moreover, is consistent with stays regularly granted in shareholder civil actions that parallel criminal investigations.

The United States recognizes the important interests of the parties to this Civil Action and has consulted with those parties regarding the requested extension of the discovery stay. Those parties have all represented to the United States that they do not oppose the extension sought in this Motion.

As the Court is aware, a shareholder derivative action involving the former Massey Energy Company, *In re Massey Energy Company Derivative Litigation*, No. 5430-CS (Del. Ch.) (the "Delaware Action"), is pending in the Delaware Court of Chancery. Like this Civil Action, discovery in the Delaware Action has been stayed until January 15, 2013. An extension of that

stay, to encompass the same period of time as the extension sought in this Civil Action, is likewise being sought in the Delaware Action.

Request For Entry Of Order Continuing The Stay Of Discovery

Accordingly, the United States respectfully requests that the Court enter an order continuing the stay of discovery in this Civil Action until the earlier of July 15, 2013, or the conclusion of the United States' criminal investigation of conduct relating to the subject matter of this Civil Action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Fred B. Westfall, Jr., Assistant United States Attorney for the Southern District of West Virginia, hereby certify that on January 11, 2013, I electronically filed the foregoing **MOTION OF THE UNITED STATES OF AMERICA TO CONTINUE THE STAY OF DISCOVERY PREVIOUSLY ENTERED BY THE COURT IN THIS CIVIL ACTION** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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